

48A C.J.S. Judges § 249

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

1. In General

b. Bias or Prejudice

(1) In General

§ 249. Rule of necessity

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(1)

Under the rule of necessity, a court will not decline to determine a matter on the ground of bias or prejudice where no other tribunal has power to act in the case.

Under the rule of necessity, a court will not decline to determine a matter on the ground of bias or prejudice where no other tribunal has power to act in the case,¹ but in such event, the necessity must be so great and overwhelming that an entire failure of justice may result if the court should disqualify itself.² The rule does not apply where other judges are available and are readily and conveniently subject to call.³

The federal statutes authorizing the disqualification of a judge for bias or prejudice were not intended by Congress to alter the rule of necessity.⁴

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Footnotes

¹ U.S.—U. S. v. Will, 449 U.S. 200, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980).

Necessity as precluding disqualification of judges, see § 235.

2 Ala.—*State v. Aldridge*, 212 Ala. 660, 103 So. 835, 39 A.L.R. 1470 (1925).

3 Minn.—*State v. Ketterer*, 244 Minn. 127, 69 N.W.2d 115 (1955).

4 U.S.—*U. S. v. Will*, 449 U.S. 200, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980).

As to disqualification of judge for bias or prejudice under federal statutes, generally, see § 251.

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